

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

FIRST APPEAL NO.299 of 2015

Ku.Sarika d/o Murlidhar Waghmare,
Age 17 years, Occupation Education,
Minor Under Guardianship of real mother
Ranjana w/o Murlidhar Waghmare,
Age 45 years, Occupation: Household,
R/o Shastri Nagar, Bhokar,
Taluka Bhokar District: Nanded.

**...APPELLANT
(Original Petitioner)**

VERSUS

1. Gajanan s/o Phulsingh Aade,
Age 25 years, Occu: Agriculturist,
R/o. Ambedkar Nagar, Barad,
Taluka: Mudkhed, District Nanded.
2. Mr.Shivraj s/o Nagnath Shete,
Age Major, Occupation: Business,
R/o. At Rajavadi, Taluka : Mukhed,
District: Nanded.
3. United India Insurance Company Ltd.,
Through its Branch Manager,
'Dayawan Complex" Station Road,
Parbhani, Taluka & District:Parbhani.

**...RESPONDENTS
(Original Respondents)**

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Mr.Surendra V.Suryawanshi, Adv., for the
appellant.

Mr.O.B.Boinwad, Adv., for respondent no.1.

Mr.Mandar Deshmukh, Adv., h/f Mr.

S.G.Chapalgaonkar, Adv., for respondent no.3.

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CORAM: P.R.BORA, J.

Date: April 11th, 2016

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ORAL JUDGMENT:

1. With the consent of the learned Counsel appearing for the parties, heard finally at admission stage.

2. The present appeal raises the question:

" Whether there is any restriction that compensation could be awarded by the Tribunal only upto the amount claimed by the claimant or in an appropriate case, more than the amount claimed by the claimants can be granted by the Tribunal ?"

3. The present appeal arises out of the judgment and award passed by the Member, Motor Accident Claims Tribunal at Bhokar, district Nanded, in MACP No.421/2010 decided on 16.9.2014. The aforesaid claim petition was filed by the appellant claiming compensation of Rs.8,00,000/-. The appellant was injured in a vehicular accident

and suffered permanent disablement. In order to substantiate the contentions raised by her in the claim petition, the appellant adduced before the Tribunal all necessary oral and documentary evidence. On assessment of the evidence so adduced by the appellant, the Tribunal found the appellant entitled to the total compensation amounting to Rs.10,66,226/-, however, since the petitioner had restricted the claim to the extent of Rs.8,00,000/-, held the petitioner entitled to receive that much of compensation.

The question is whether the Tribunal was right in not awarding the amount of compensation to which, according to the Tribunal, the appellant was entitled to, only for the reason that, in the claim petition the appellant had restricted the claim to the extent of Rs.8,00,000/-.

4. Section 168 of the Motor Vehicles Act, 1988, empowers the Court to award such compensation as appears to be just, which has been interpreted to mean `just in accordance with

law' and it can be more than the amount claimed by the claimant. The Honourable Apex Court in the case of **Nagappa Vs. Gurudayal Singh and others ((2003) 2 SCC 274)** has held that,

" Under the provisions of Motor Vehicles Act, 1988, there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is it should be 'Just' compensation."

In view of the law laid down as above by the Honourable Apex Court, the learned Tribunal ought not have hesitated in awarding the amount more than claimed by the appellant when, from the evidence on record, it has reached to the conclusion that the appellant was entitled for the total compensation of Rs.10,66,226/- and that it was the just and fair compensation payable to the appellant.

5. In view of the above, the appeal deserves to be allowed and it is accordingly allowed. The compensation amount of Rs.8,00,000/- is enhanced to Rs.10,66,226/- and the award is directed to be modified accordingly. The deficit Court fee be recovered from the appellant before preparing the modified award.

It is clarified that the only issue that was raised in the present appeal was 'whether the compensation could be awarded only upto the amount claimed by the claimant, or in an appropriate case, the Tribunal can grant more amount than claimed' and that has only been answered in the present judgment.

(P. R. BORA)
JUDGE

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AGP/299-15fa